IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

(Chapter VIII, Rule 32(2) (b)

Description of Case

Writ Petition No. 249 of 2005 (S/B)
(Old No. 8468 of 1982)

Date of decision: 19th April, 2007

A.F.R (Approved for Reporting)

~~Not approved for reporting~~

Date: 19.04.2007 Initials of Judge

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No. 249 of 2005 (S/B)
(Old No. 8468 of 1982)

1. State of Uttar Pradsh
   Through Secretary to Government, Rural Development Department, U.P. Civil Secretariat, Lucknow
2. The District Magistrate, Dehradun
3. The Distt. Development Officer, Dehradun
4. The Block Development Officer,
   Block Sahaspur,
   District Dehradun ... Petitioners

Versus

1. The U.P. Public Services Tribunal (III) Lucknow
2/1 Saleshwar Prasad aged about 53 years
   S/o Shri Ishwari Dutt
   R/o Village Danda, Dharampur
   P.O. Nehru Nagar,
   District Dehradun
2/2 Suresh Chandra aged about 50 years
   S/o Sri Ishwari Dutt
   R/o Village Danda, Dharampur
   P.O. Nehru Nagar,
   District Dehradun ... Respondents

Mr. Subhash Upadhyaya, learned Brief Holder for the petitioners/State.
None for respondent Nos. 2/1 and 2/2.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Ratwat, J.

1. By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioners have sought the following reliefs:-

> "i. To issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 5th may 1982 passed by U.P. Public Services Tribunal (III) Lucknow, respondent No. 1 (Annexure-5 to the writ petition).
>
> ii. To issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case.

iii. To award costs throughout to the petitioners."

2. The respondent Rameshwar Prasad (the petitioner before the Tribunal) was originally appointed as temporary Jeep Driver for a period of one month vide order dated 13.02.1981 passed bye the District Development Officer, Dehradun. He was posted in Sahaspur Block vide order dated 01.08.1981. The District Development Officer regularized the services of the respondent (Rameshwar Prasad) as a temporary Jeep Driver. However, vide order dated 07.01.1982, the District Magistrate, Dehradun terminated the services of the respondent (Rameshwar Prasad). Thereafter, the respondent (Rameshwar Prasad) filed a Claim Petition before the U.P. Public Services Tribunal (III), Lucknow challenging the order of termination of his services. The learned Tribunal allowing the claim petition quashed the termination order dated 07.01.1982 and held that the respondent (Rameshwar Prasad) would be deemed to be in continuous services as Jeep Driver with all benefits of pay etc. Felling aggrieved by the above, the petitioners have filed the present writ petition before this Court. The respondent No.2 (Rameshwar Prasad had died and his legal representatives had been brought on record as respondent Nos. 2/1 and 2/2.

3. None is appearing for the respondent No. 2/1 and 2/2.

4. Heard Sri Subhash Upadhyaya, learned Brief Holder for the State and perused the record.

5. Learned counsel for the petitioners contended that the learned Tribunal erred in holding that the services of the respondent No.2 Rameshwar Prasad would only be terminated by District Development Officer, Dehradun, earlier

known as Additional District Magistrate (Planning)/District Planning Officer (Hereinafter referred as D.D.O.); District Magistrate, earlier knows as District Officer (hereinafter referred as D.M.), Dehradun being a superior officer in rank and grade to the D.D.O. has a right and authority to terminate his services in view of the U.P. Community Development Organization (Appointing Authority) Rules 1974 framed under Article 309 of the Constitution (hereinafter referred as Rules 1974). The case of the respondent No.2 Rameshwar Prasad before the Tribunal was that D.M. was not his appointing authority and D.D.O. was his appointing authority, as such, his services could only be terminated by the D.D.O. and not by the D.M. Learned counsel for the petitioners contended that according to Rules 1974, D.M. was the appointing authority for those posts, the minimum of whose pay scales did not exceed Rs. 280/- and the above Rules further reveals that D.D.O. was also the appointing authority for those posts the minimum of whose pay scale did not exceed to Rs. 230/-. The pay scale of jeep driver was Rs. 175/-. In view of the above, the D.M. and D.D.O. being the appointing authorities were competent to appoint respondent No. 2 on the post of Jeep Driver and by virtue of being appointing authority any one of them could terminate the services of the respondent No.2, if the authority terminating the services of the respondent No.2 was not inferior and subordinate in rank and grade than the authority who appointed him. It is further pertinent to mention here that the post of D.D.O. was earlier known as Additional District Magistrate (Planning). The District Magistrate is also known as District Officer. He discharges the function of D.M. as well as District Officer. The respondent No. 2 having been appointed by the D.D.O., Dehradun was liable to be terminated by the order passed either by the D.D.O. or any

other superior to him in the rank and grade. The D.M., Dehradun being the superior Officer in rank and grade to the D.D.O., Dehradun was competent to terminate the services of respondent No. 2. The post of D.M. is superior in rank and grade to the D.D.O. Article 311 (1) of the Constitution provides as under:-

> *"Art. 311. (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."*

6. According to this Article the authority to terminate or remove cannot be subordinate in rank to the appointing authority and as such by necessary implication the punishing authority may be higher in rank to the appointing authority. Article 311 (1) does not require that dismissal or removal must be ordered by the same authority who had made the appointment. That does not mean that the power cannot be exercised by the authority higher than the appointing one. If both the officers are appointing authority for the same post out of which two, one is superior and the other is inferior officer in rank and grade, than the respondent No.2 Rameshwar Prasad could be terminated by any of the Officer who had been designated as appointing authority. D.M. being the superior in rank and grade to the D.D.O., was competent to appoint respondent No.2 Rameshwar Prasad as well as terminate his services notwithstanding the fact that he was appointed by D.D.O. who was inferior in rank and grade than him. It is also pertinent to mention here that D.M. is not the appellate authority in this case.

7. The controversy came before the Hon'ble Apex court in **State of U.P. and others Vs. Ram Naresh Lal** reported in **AIR 1970 SC 1263 (V 57 C 263)** wherein the respondent was appointed as a temporary Accounts Supervisor in the Agriculture Department by the Director of Agriculture in the year 1947. The respondent was transferred to Agriculture Engineering Department as temporary Assistant Accountant by the Director Agriculture, U.P. He was again transferred on deputation as Assistant Accountant in the Office of the Development Commissioner (Planning Department). The respondent was confirmed on the permanent post of Junior Clerk in the Irrigation Department by the Superintending Engineer, Agricultural Engineering Circle. Thereafter, the Government sent a letter to the Development Commissioner. The entire staff on deputation with him from Irrigation Department for the execution of the minor irrigation schemes should be treated to have been transferred to your control and further directed to obtain the option to elect their permanent transfer in the planning set up and go back to their irrigation department. The respondent on his option was sent to Establishment-II Section of the Development Commissioner where he was suspended and dismissed on the charge of receiving the bribe of Rs. 100/- with a view to help getting transfer another employee. The said dismissal order was challenged before the Allahabad High Court. The learned Single Judge was of the view that the Development Commissioner was not the appointing authority of the respondent and he had no authority to dismiss his services. The learned Single Judge further held that the appointing authority was the Superintending Engineer of the parent department. The order was quashed. The State preferred the special appeal before the Division Bench and the Division Bench also came to the same conclusion and dismissed the

appeal. The Hon'ble Apex Court while allowing the appeal observed as under :-

> Assuming that the respondent had not been permanently transferred and further assuming that he was still on deputation in the Planning Department, even then the Development commissioner was entitled to dismiss the respondent by virtue of various orders. The order dated May 21, 1958, which has been extracted above, clearly places the control over the entire staff on deputation from the Irrigation Department to the Planning Department with the Development Commissioner. The word "control" is a wide word and includes disciplinary jurisdiction. In the context there is no doubt that it was the intention to give disciplinary jurisdiction over the entire staff on deputation to the Development Commissioner. The previous order dated July 15, 1956, had vested the power of transfer and punishment in the Development Commissioner. It seems to us that the later order in no way confers lesser powers on the Development commissioner. <u>There is nothing in the Constitution which debars the Government from conferring powers on an officer other than the appointing authority to dismiss a Government Servant provided he is not subordinate in rank to the appointing officer or authority. These three orders (viz., D/- August 3, 1932, May, 21, 1958 and March 4, 1960) which we have mentioned above, read together clearly confer powers on the Development commissioner to dismiss persons on deputation in the Planning Department."</u>

8. Rule 3 of the U.P. Temporary Government Servants (Termination of Services) Rules 1975 reads as under :-

"3.Termination of service- (1) Notwithstanding anything to the contrary in any existing rules of orders on the subject, the services of a Government servant in temporary service shall be liable to termination at any time by a notice in writing given either by the Government Servant to the appointing authority, or by the appointing authority to the Government servant.

(2) The period of notice shall be one month:

Provided that the services of any such Government servant may be terminated forthwith, and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or as the case may be, for the period by which such notice falls short of one month at the same rates at which he was drawing them immediately before the termination of his services.

Provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the Government servant to pay any penalty in lieu of notice:

Provided also that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated shall be effective only if it is accepted by the appointing authority, provided in the case of a contemplated disciplinary proceeding, the Government servant is informed of the non-acceptance of his notice before the expiry of that notice."

9. Perusal of the Rule reveals that the appointing authority had the power to terminate the services of the person who has been temporary employed in service. The learned Tribunal has come to the conclusion that D.M. as well as the D.D.O. were the appointing authority for the pot of Jeep Driver. The learned tribunal was not justified in holding that

the authority who had actually made the appointment should made the termination order.

10. Sri Subhash Upadhyaya, learned Brief Holder for the petitioners / State contended that the learned tribunal eared in holding that the Jeep of Kalsi Block has been replaced by the another Jeep; there was no occasion for terminating the services of the respondent No. 2 Rameshwar Prasad and the termination order was arbitrary. The State has taken its case before the Tribunal that one Jeep in Block Kalsi had been condemned by the District Transport Commissioner, so there was no requirement of any Jeep Driver and the respondent No. 2 Rameshwar Prasad being the junior most among the Jeep Drivers in the Development Department so his services were terminated. The respondent No. 2. Rameshwar Prasad tried to show before the Tribunal that Deputy Transport Commissioner on 08.05.1981 declared Jeep No. USO 3518 of Kalsi Block as condemned The respondent No. 2 Rameshwar Prasad before the Tribunal had further taken a case in the rejoinder affidavit that the Jeep of the kalasi Block was condemned before his appointment and the same had also been replaced by another jeep. He has also filed gradation list of the Jeep Drivers which reveal that the respondent No.2 Rameshwar Prasad was the junior most driver working in the department. It is nowhere revealed from the record that when new jeep was purchased.

11. The respondent No.2 was appointed as temporary Jeep Driver for a fixed period vide order dated 13.02.1981 by the D.D.O. vide order dated 01.08.1981, D.D.O. regularized the services of the respondent No. 2 as temporary jeep driver. The same are quoted hereunder:-

"आदेश

श्री रामेश्वर प्रसाद निवासी धरमपुर टान्डा जो लाईट व्हीकील चलाने का वैध लाईसेन्स नमबर आर0–10240 रखते है, की नियुक्ति जीपचालक के पद पर विकास खन्ड सहसपुर में वेतनमान 175–250 में की जाती है। यह नियुक्ति पूर्णतः अस्थाई है, और वर्तमान समय में एक माह के लिये की जाती है, किन्तु आवश्यकता पडने पर कभी भी समाप्त की जा सकती है । श्री रामेश्वर प्रसाद को आदेश दिया जाता है, कि वे अपना योगदान सूचना तुरन्त खन्ड विकास अधिकारी सहसपुर को प्रस्तुत करे।

एम0 पी0 गैरोला,
जिला विकास अधिकारी
देहरादून

"आदेश

इस कार्यालय के पूर्व प्रसारित आदेश सं04337/स्था0/80–81 दि0 13–2–1981 में आंशिक संशोधन कर श्री रामेश्वर प्रसाद जीपचालक को वेतनमान 175–250 पर उनका कार्य देखते हुए अस्थाई रूप से इनकी सेवाये जीपचालक के पद पर नियमित की जाती है। यह नियुक्ति पूर्णतः अस्थाई और बिना किसी पूर्व सूचना के किस भी समय समाप्त की जा सकती है।

एम0 पी0 गैरोला,
जिला विकास अधिकारी
देहरादून''

The respondent No.2 was appointed as a temporary jeep driver by the aforesaid order.

12. Perusal of the termination order clearly reveals that it is a simplicitor termination order. The same is quoted hereunder:-

"कार्यालय नोटिस

dk;kZy; ftykf/kdkjh] nsgjknwuA

प0स02484/स्था0/विकास/81–82 दिनांक जनवरी, 7, 1982

श्री रामेश्वर प्रसाद
जीपचालक,
विकास खन्ड सहसपुर।
जिला देहरादूर।

आपकी सेवाओ की विभाग को आवश्यकता नहीं है। अतः इस नोटिस के प्रसारण की तिथी से 30 दिन की समाप्ति पर आपकी सेवायें विभाग से समाप्त की जाती है।

ह0 ओ0पी0 शर्मा,
जिलाधीकारी
देहरादून।''

Perusal of the order clearly reveals that the services of respondent no. 2 Rameshwar Prasad were terminated by the simplicitor order. It did not make any stigma upon respondent. Rule 3 of 1975 clearly provides that the services of the temporary government servant can be terminated with one month's notice. The order of appointment clearly reveals that the services of the respondent no. 2 Rameshwar Prasad were temporary and his services can be terminated at any time without any notice. The services of the respondent No. 2 Rameshwar Prasad had been terminated by the simplicitor termination order in accordance with the Rules. The Tribunal was not justified in holding that the termination order was not legally passed under the Rules. The authority had passed the termination order well within its jurisdiction.

13. In view of the foregoing discussion, writ petition deserves to be allowed and is hereby allowed. The impugned judgment and order dated 05.05.1982 passed by the learned Tribunal in Claim No. 56 (F)/III/82 is hereby set aside and the claim petition is dismissed.

14. No order as to costs.

(J.C.S.Rawat, J.) (Rajeev Gupta, C.J.)

Dated 19th April, 2007
Shiv